IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3071 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

S M DAGLI

Versus

UNION BANK OF INDIA

Appearance:

1. Special Civil Application No. 3071 of 1986

MR MANISH K DAGLI for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 16/04/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner has challenged the action of the respondent-Bank in making the punitive order dated 8.10.1985 of withdrawal of special allowance of "Special Assistant" for the period of two years. Admittedly, the order was made after an elaborate departmental enquiry at which he was found to have been guilty of four

misconducts, viz. disobeying the lawful and reasonable orders of the superiors, (2) frivolous and insubordinate attitude towards the superiors, (3) gross breach of instructions for running of the department and (4) doing acts prejudicial to the interests of the bank. It appears from the record that the petitioner was served with a show cause notice to state reasons as to why the common proposed punishment should not be imposed, and that opportunity was not availed by him on the ground that the time at his disposal was short. It also appears from the record that the petitioner had preferred an appeal which was rejected by a reasoned order dated 11.3.1986 after perusing the relevant documents. Even otherwise, admittedly and according to the original order dated 13.10.1975 designating the petitioner as Special Assistant, he was entitled to Special Allowance only as long as he was required to perform the functions as stated therein. A copy of that order was placed and taken on record at the instance of the petitioner.

2. The only ground and argument pressed by the learned counsel for the petitioner was that the Enquiry Officer was biased against the petitioner since he had on his own called witnesses during the course of the departmental enquiry and not permitted the petitioner to cross-examine such witnesses. The material on record in that behalf revealed that an independent person, being Accountant of the bank, was called by the Enquiry Officer as a witness to ensure that an innocent person was not punished. Since that witness was called by the Enquiry Officer, he was not examined by the management and not cross-examined by the defence, but an opportunity to ask questions was given to both the parties. It was also pointed out on behalf of the respondent that the Disciplinary Authority under the respondent was expressly authorized to summon or enforce attendance of any employee or workman of the bank as a witness and examine such persons.

3. The learned counsel for the petitioner sought to argue that the mere factum of witness being called by the Enquiry Officer was sufficient to support the inference of bias and reliance was placed in that regard upon the judgment of the Supreme Court in GULLAPPALLI NAGESWARRAO ETC. v. STATE OF ANDHRA PRADESH AND OTHERS [AIR 1959 SC 1376]. Admittedly, this judgment was not directly applicable in the facts of the present case, but it was pressed under an impression that the principles governing the "doctrine of bias" as adumbrated in paragraph 6, were relevant. Learned counsel Mr.Dagli sought time for further preparation and research. Since this petition,

after exhausting the remedy of appeal, has been filed in 1986, admitted in 1988 and at least once dismissed for default during its pendency in the year 1998, it could not be adjourned for further studies or for production of additional materials by the learned counsel.

4. No ground is made out to interfere with the order of punishment in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution. The petition is, therefore, rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)